

V.

DISCUSSION

Availability of Loops

The key issue in this proceeding involves a determination of whether the loops requested in the BRE orders in dispute were available within the meaning of the interconnection agreement. Citing Section 9.4.2 of the interconnection agreement, Ameritech Michigan insists that the ALJ erred in concluding that the unbundled loops were available at the time that BRE's orders were processed. According to Ameritech Michigan, it is obligated under the interconnection agreement only to make available unbundled loops that exist, not loops that must be constructed in order to function. It is Ameritech Michigan's contention that, if allowed to stand, the PFD effectively eliminates the term available from the interconnection agreement with regard to the provisioning of unbundled loops. Ameritech Michigan argues that acceptance of the PFD's interpretation means that a loop will always be available without regard to (1) the cost of building new facilities, (2) whether the loop is for a new facility within the area, (3) whether there is a complete transmission path, (4) whether there are contiguous facilities, (5) whether the order involves a simple loop or a high speed digital loop that might require conditioning, or (6) whether service to the area had been provided through use of remote switching or an integrated digital loop carrier system.

Ameritech Michigan argues that the commonly understood meaning of available is that an item is present or ready for immediate use. In the context of the interconnection agreement, Ameritech Michigan maintains that for an unbundled loop to be considered available, the required facilities must exist and must be spare (not in use by another customer). Ameritech Michigan insists that a loop is available in only two scenarios. First, if the required component parts exist in a fully con-

nected fashion so as to provide a complete transmission path that can be assigned at the time the loop request is processed. Second, Ameritech Michigan considers a loop to be available if all the required contiguous components exist and are terminated at appropriate outside plant interfaces so that the components can be readily connected by a simple dispatch of an Ameritech Michigan technician. Ameritech Michigan insists that these two types of loop systems are routinely assigned on a nondiscriminatory basis without regard to the identity of the requesting party and without imposition of special construction charges.

Ameritech Michigan maintains that it was inappropriate for the ALJ to rely exclusively on the Commission's prior interpretation of availability in Case No. U-11654. Ameritech Michigan stresses that Case No. U-11654 involved calculation of performance intervals and had nothing to do with pricing of unbundled loops or the imposition of special construction charges. Moreover, Ameritech Michigan maintains that the Commission wrongly decided Case No. U-11654. Further, Ameritech Michigan maintains that the ALJ compounded the Commission's misinterpretation in Case No. U-11654 by incorrectly asserting that the same type of unbundled loops are at issue in this proceeding. Ameritech Michigan argues that it is inappropriate to extend the holding in Case No. U-11654 to this proceeding because the issues presented and the types of loops involved are completely different.

Ameritech Michigan also contends that the Commission implicitly observed in Case No. U-11654 that some of BRE's orders could involve unbundled loops that are not available. Stressing that the Commission expressly noted that no remote switching or integrated digital loop carrier orders were at issue in Case No. U-11654, Ameritech Michigan insists that it logically follows that a loop is not available under such circumstances and that Section 9.4.4 of the interconnection agreement should be understood as allowing for the recovery of additional costs associated

with providing such loops by other means. Finally, Ameritech Michigan maintains that the ALJ's decision to extend the holding in Case No. U-11654 to this case will lead to further disputes between the parties.

For these reasons, Ameritech Michigan requests that the Commission reject the ALJ's findings that (1) loops are always available in areas served by Ameritech Michigan, (2) the disputed assessment of special charges by Ameritech Michigan violates the MTA and the interconnection agreement, (3) Ameritech Michigan should be directed to cease and desist from demanding special construction charges under similar circumstances in the future, and (4) that the special construction charges should be refunded if paid or cancelled if unpaid.

In response, BRE insists that the ALJ correctly interpreted the provisions regarding the availability of loops in the interconnection agreement and Ameritech Michigan's tariffs. Further, BRE maintains that the ALJ's reliance on Case No. U-11654 is appropriate.

According to BRE, Ameritech Michigan has a ubiquitous network in place, and unless competitors can access that network in a nondiscriminatory manner, they will never achieve a sufficient foothold for competition to thrive in the local marketplace.

BRE disputes Ameritech Michigan's claim that the ALJ's interpretation of available is too broad. BRE argues that the ALJ's definition is not all-inclusive and does not cover new territories or newly constructed buildings. Moreover, BRE insists that under the circumstances at issue in this case, it is abundantly clear that Ameritech Michigan did have loops available that could have served BRE's customers. Indeed, BRE stresses that Ameritech Michigan actually provided service to several of the customers who cancelled their orders after Ameritech Michigan imposed the unlawful special construction charges.

BRE contends that Ameritech Michigan's restrictive definition of available is not supported by the interconnection agreement, the FTA, or the MTA. Rather, BRE insists that Ameritech Michigan has engaged in a semantical exercise to unilaterally rewrite the interconnection agreement in order to thwart competition. According to BRE, Ameritech Michigan's attack on the Commission's decision in Case No. U-11654 conveniently ignores the fact that Ameritech Michigan raised the same issues about availability in that case and that the same provision of the interconnection agreement, Section 9.4.2, was at issue. Accordingly, BRE maintains that the ALJ correctly decided that the interpretation of "available" in Case No. U-11654 controls the outcome of this proceeding.

BRE also maintains that none of the 65 instances cited in the complaint involves any of the criteria listed in Ameritech Michigan's special construction tariff that trigger imposition of special construction charges. Additionally, BRE maintains that digital loops, which are purchased out of Ameritech Michigan's tariffs, are priced significantly higher to allow Ameritech Michigan to recover the costs associated with providing digital service. For this reason, BRE insists that special construction charges are neither necessary nor appropriate in conjunction with the provisioning of digital loops.

The Staff agrees with BRE that Ameritech Michigan is contesting the same availability issue in this proceeding that it failed to prevail on in Case No. U-11654. According to the Staff, the Commission need not revisit the issue other than to reaffirm its previous decision as recommended by the ALJ. The Staff maintains that Ameritech Michigan violated its tariffs 65 times over a five-month period and engaged in discriminatory conduct in violation of the FTA and the MTA. Moreover, the Staff insists that Ameritech Michigan's various rationales for imposing additional charges are flawed. Arguing that Ameritech Michigan's TSLRIC studies approved in Case No. U-11280 reflect all of the costs of provisioning unbundled loops on a long run, forward looking basis, the Staff

insists that the utilization of remote switching deployed as a loop concentrator is a short run approach to costing certain installations. According to the Staff, allowing Ameritech Michigan to establish costs and rates on a long run, forward looking basis and also to collect special construction charges determined on a short run basis necessarily involves some overlap of costs and would likely result in a double recovery.

Likewise, the Staff maintains that the generous utilization factors in Ameritech Michigan's TSLRIC studies should provide for adequate spare facilities. Consequently, the Staff argues that Ameritech Michigan's reliance on the excuse that no spare facilities were available for the provisioning of unbundled loops served by integrated digital loop carrier systems is simply inconsistent with the TSLRIC methodology. Accordingly, the Staff maintains that spare facilities are adequately accounted for in Ameritech Michigan's TSLRIC studies and that there should be no additional costs associated with provisioning unbundled loops through use of integrated digital loop carrier systems.

The Staff also maintains that Ameritech Michigan's attempts to impose additional charges for loop conditioning were not appropriate. The Staff maintains that although Section 9.4.5 of the interconnection agreement contemplates the payment of additional charges in situations where BRE orders a loop of a distance that exceeds the transmission characteristics for that loop type, the Staff contends that BRE's orders do not involve this circumstance. Rather, the Staff insists that it would

be more accurate to characterize BRE's requests as involving loop conversion rather than loop conditioning.¹³

The Staff argues that Ameritech Michigan's attempt to charge BRE for special construction charges due to the lack of facilities is entirely bogus. According to the Staff, Ameritech Michigan's rates and charges for unbundled loops, which are based on its current TSLRIC studies, include all capital costs necessary for the provision of service, including raw materials, all costs associated with installation, and all other required activities.

The Commission is empowered by Section 204 of the MTA, MCL 484.2204; MSA 22.1469(204), to resolve disputes between telecommunications providers unable to agree on a matter related to a regulated telecommunications issue. In resolving the dispute between BRE and Ameritech Michigan over interpretation of the interconnection agreement, the Commission bears in mind that the objectives enumerated in Section 101 of the MTA, MCL 484.2101; MSA 22.1469(101), include the encouragement of competition and the entry of new providers. In so doing, the Commission finds that the ALJ's interpretation of the term "available" does not effectively eliminate Section 9.4.2 of the interconnection agreement.¹⁴ Rather, the Commission finds that Ameritech Michigan's interpretation of the term is unduly restrictive and inconsistent with past Commission decisions.

¹³According to the Staff, BRE's orders involved simple requests for unbundled digital loops and that the charges assessed by Ameritech Michigan are associated with the cost of converting an analog loop to a digital loop. The Staff insists that BRE should not be forced to pay the conversion costs because (1) such costs are recovered through the higher monthly rate for the digital loop, and (2) Ameritech Michigan is solely responsible for deciding whether BRE will be served through a new digital loop or whether the loop will be provisioned by converting an existing analog loop to a digital loop.

¹⁴Section 9.4.2 provides that "Ameritech shall only be required to make available Loops and Ports where such Loops and Ports are available."

Ameritech Michigan's definition of available was derived from a dictionary and was modified through addition of conditions associated with Ameritech Michigan's belief that BRE, as a cost causer, must be held responsible for any incremental costs associated with the conversion of Ameritech Michigan's actual network to serve BRE's customers. The Commission finds that Ameritech Michigan's position is flawed because its approach totally ignores the requirement in the MTA that Ameritech Michigan's costs are to be based on a TSLRIC methodology and are to reflect long run, forward-looking costs. In its September 8, 1994 order in Case No. U-10620, the Commission identified nine principles to be followed in preparing TSLRIC studies. Among other things, the Commission directed that the increment being studied should be the entire quantity of the service provided, not some small increase in demand (Principle No. 3), and that any function necessary to produce a service must have an associated cost (Principle No. 4).

The record and the pleadings in this proceeding are burdened with elaborate and conflicting assertions made by the parties concerning whether Ameritech Michigan's TSLRIC-based costs and rates already include none, some, or all of the costs that are covered by the additional activities that gave rise to Ameritech Michigan's imposition of special construction charges. The ALJ specifically found that most, if not all, of the special construction charges at issue in this proceeding relate to normal, routine types of costs that are already reflected in the costs and rates determined and approved by the Commission. The Commission agrees.

Cost Principles Nos. 3 and 4 from Case No. U-10620 indicate that long run, forward looking costs should incorporate normal, routine activities associated with the task of providing unbundled loops. Further, the Commission finds that it is unreasonable for Ameritech Michigan to suggest that a network constructed on the basis of long run, forward looking costs would not have sufficient spare capacity to permit the provisioning of unbundled loops as normal, routine work. In any event,

the Commission agrees with the ALJ that, to the extent that the costs associated with the work that Ameritech Michigan insists is necessary to connect BRE's unbundled loops are not reflected in its TSLRIC studies filed in Case No. U-11280, the remedy is for Ameritech Michigan to re-evaluate the methodology used in its next biennial filing.

The Commission finds that Ameritech Michigan's argument that the October 2, 1998 order in Case No. U-11654 should not control the outcome of this proceeding is not well taken. Although Case No. U-11654 involved a complaint by BRE against Ameritech Michigan regarding performance standards in the interconnection agreement, both Case No. U-11654 and the present proceeding involve interpretation of the term "available" in Section 9.4.2 of the interconnection agreement. It is ludicrous for Ameritech Michigan to suggest that the term should have two widely different meanings in the same section of the interconnection agreement. Accordingly, the Commission finds that the ALJ cannot be faulted for applying the Commission's determination in Case No. U-11654 to this case to resolve the issue of availability.

For these reasons, the Commission is persuaded that Ameritech Michigan's exceptions regarding the issue of availability should be rejected.

Special Construction Tariff

Ameritech Michigan's next three exceptions relate to the ALJ's findings regarding its special construction tariff and the nature of the work underlying the special construction charges.¹⁵

¹⁵Ameritech Michigan maintains that there is some confusion in the record because its tariffs do not explicitly contain a special construction tariff, but rather have a construction charges tariff (Tariff M.P.S.C. No. 20R, Part 2, Section 5, Sheet 1) and a uniform extension tariff (Tariff M.P.S.C. No. 20R, Part 2, Section 5, Sheets 4-6). However, the Commission is not persuaded that any imprecision in the description of the tariffs regarding special construction charges has any bearing on the outcome of this proceeding.

Ameritech Michigan maintains that its uniform extension tariff does not apply to this situation and, to the extent that its construction charge tariff may be applicable, it was properly applied by Ameritech Michigan to recover unusual investment or expenses incurred in the provisioning of loops to BRE. According to Ameritech Michigan, this tariff provision may be applied to the 65 incidences of special construction because, in each case, Ameritech Michigan encountered problems that caused unusual investment or expense associated with the provisioning of the requested unbundled loops. Ameritech Michigan insists that this work cannot be considered normal or routine because it is not necessary to provide service to Ameritech Michigan's own customers.

In response, BRE and the Staff maintain that Ameritech Michigan's attempt to disavow application of its tariff involving special construction charges is entirely disingenuous because the record clearly demonstrates that when queried about its authority to impose such charges, Ameritech Michigan cited BRE to Tariff 20R, Part 2, Section 5, as shown on Exhibit C-1. Indeed, both BRE and the Staff chastised Ameritech Michigan for its inconsistency on this issue.

The Commission is not persuaded by Ameritech Michigan's arguments regarding its tariff provisions. Rather, the Commission finds that the ALJ correctly determined that additional charges should not be assessed by Ameritech Michigan for normal or routine work required to provision loops. The Commission agrees with the ALJ's determination that the record does not establish any unique or unusual circumstances to justify the imposition of special construction charges in this case. Accordingly, Ameritech Michigan's exceptions are rejected.

Discrimination

In its next exception, Ameritech Michigan maintains that it cannot be required to treat BRE in the same manner as it treats its own customers. Ameritech Michigan asserts that its retail customers

and CLECs are not similarly situated. According to Ameritech Michigan, its retail customers purchase basic local exchange service, which is functionally and physically different from the provisioning of unbundled loops to CLECs. Further, Ameritech Michigan maintains that the rates for basic local exchange service and unbundled loops have different components and that the opportunities for revenue generation are different. Additionally, citing Case No. U-10647, Ameritech Michigan maintains that the Commission previously recognized that CLECs should be treated differently than Ameritech Michigan's retail customers. Indeed, Ameritech Michigan suggests it would be unfair for BRE to be treated as a retail end-user for some purposes, but to enjoy the advantages of being a competing provider for other purposes, such as the acquisition of network elements at TSLRIC-based rates.

Ameritech Michigan also states that its provisioning of unbundled loops to BRE, including the assessment of special construction charges, is just, reasonable, and nondiscriminatory within the meaning of Section 251(c)(3) of the FTA, 47 USC 251(c)(3), because Ameritech Michigan is under no obligation to treat BRE in the same manner as it treats its own customers. Citing its use of an automated loop assignment system and the nondiscriminatory assignment of technicians, Ameritech Michigan insists that it treats all CLECs in the same manner as it treats itself, which is all that is required under the FTA. Ameritech Michigan also argues that the ALJ's finding that Ameritech Michigan must provide loops to BRE in the same manner that it provides loops to its retail customers renders Section 9.4.4 of the interconnection agreement completely superfluous. Ameritech Michigan argues that it is neither discriminatory nor unreasonable for it to seek recovery for loop conditioning, which is clearly allowed under the applicable tariff, or to recover for special construction when there is a lack of facilities necessary to provision a loop.

Moreover, Ameritech Michigan insists that BRE has been provided with a meaningful opportunity to compete. Citing BRE's growth of 22,000 access lines in its first 14 months of operation, Ameritech Michigan argues that imposition of just and reasonable special construction charges on only 1.15% of BRE's orders simply does not give rise to a claim for discrimination.

Finally, Ameritech Michigan argues that when it has no available facilities to serve a new customer, Ameritech Michigan and BRE are facing the same circumstances. Because Ameritech Michigan would have to build new facilities to add a new customer, it argues that BRE should be required to bear the same economic burdens and face the same economic risks. According to Ameritech Michigan, if it is forced to pay for the construction of a new loop for a BRE customer, it, not BRE, faces the risk of loss if the customer cancels its service. Indeed, Ameritech Michigan insists that adoption of the ALJ's findings would shift significant costs and risks that should be borne by BRE to Ameritech Michigan and result in a significant competitive advantage for BRE that was not intended by Section 251(c)(3) of the FTA.

In its response, BRE argues that it is not seeking the same status as one of Ameritech Michigan's retail customers. Rather, BRE argues that it merely wants to ensure that when Ameritech Michigan determines the extent to which it will assess special construction charges for making a loop available for sale, the fact that the loop will be sold to an Ameritech Michigan retail customer or to an interconnecting carrier should not determine whether special construction charges are imposed. BRE stresses that at least half of the orders under dispute involve a lack of facilities under circumstances where Ameritech Michigan routinely corrects the lack of facilities on behalf of its own customers without charge. According to BRE, such disparate treatment is clearly illegal.

The Commission finds that Ameritech Michigan's exception should be rejected. Ameritech Michigan's flawed understanding of its obligation to provide nondiscriminatory treatment of com-

peting providers is set forth in the direct testimony of Kelly Ann Fennell, its Director of Regulatory Policy, as follows:

Q. Does “non-discriminatory” mean that [unbundled network elements] must be provisioned to [BRE] in the same manner that Ameritech Michigan provisions retail services to its end users?

A. No. “Non-discriminatory” means that Ameritech Michigan must treat [BRE] in the same manner as it treats all CLECs.

4 Tr. 430.

Ameritech Michigan’s view of nondiscrimination suggests that any type of treatment is appropriate so long as Ameritech Michigan applies such treatment equally to all CLECs. However, if Ms. Fennell’s description of nondiscriminatory treatment were to be adopted, Ameritech Michigan would be free to treat all CLECs in an anticompetitive manner so long as it applies such treatment equally to all CLECs, irrespective of how it treats itself or its end-user customers. This is certainly not what was envisioned by the drafters of the FTA and MTA.

Section 305(1) of the MTA, MCL 484.2305(1); MSA 22.1469(305)(1), prohibits Ameritech Michigan from discriminating against other providers in the provision of basic local exchange service. Further, Section 355 of the MTA, MCL 484.2355; MSA 22.1469(355), explicitly requires Ameritech Michigan to allow other providers to purchase unbundled service offerings on a nondiscriminatory basis. Moreover, under Section 251(c)(2)(C) of the FTA, 47 USC 251(c)(2)(C), ILECs are required to provide interconnection to CLECs at least equal in quality to that which the ILEC provides to itself. In addition, Ameritech Michigan is obligated by Sections 251(c)(2)(B) and 251(c)(3) of the FTA, 47 USC 251(c)(2)(B) and 47 USC 251(c)(3), respectively, to provide interconnection and access to unbundled network elements on terms that are just, reasonable, and non-discriminatory. Indeed, the FCC interpreted the provisions of the FTA in its August 19, 1996 order

in CC Docket No. 96-98 not only to require that interconnection and unbundled network elements be offered equally to all requesting carriers in the same manner that the ILEC provisions such elements to itself, but also to require that the provision of unbundled network elements be done in a manner that permits an efficient competitor to have a meaningful opportunity to compete. Finally, the Commission notes that numerous provisions of the interconnection agreement obligate Ameritech Michigan to deal with BRE in a nondiscriminatory manner.

In this proceeding, the event that precipitates a finding of discrimination is Ameritech Michigan's determination that under certain circumstances it can require BRE to pay special construction charges in connection with the provisioning of an unbundled loop when, under identical circumstances, it routinely foregoes the collection of such charges from its own customers to whom it is provisioning unbundled loops. Having rejected Ameritech Michigan's interpretation of the term "available" in the interconnection agreement, the Commission finds that Ameritech Michigan has no basis for imposing special construction costs on BRE when, under similar circumstances it foregoes recovery of these costs on its own behalf. Accordingly, Ameritech Michigan's exception is rejected.

Double Recovery

Ameritech Michigan also challenges the ALJ's determination that imposition of special construction charges constitutes a double recovery because the same types of activities that underlie these costs are already incorporated into Ameritech Michigan's rates. Ameritech Michigan's arguments in this regard were implicitly rejected in the Commission's discussion of the availability issue. Accordingly, further discussion of the merits of Ameritech Michigan's exception regarding double recovery serves no purpose.

Waiver

Ameritech Michigan contends that the waiver issue arose because BRE initiated the practice of authorizing special construction work and then refusing to pay for it. According to Ameritech Michigan, had BRE paid for the work it ordered, this issue would not have arisen.

In response, BRE maintains that Ameritech Michigan's interpretation of this dispute is flawed. According to BRE, the waiver language conflicts with the dispute resolution process contained in Section 29.19 of the interconnection agreement. Further, BRE insists that its refusal to waive its rights under Section 29.19 should not constitute an excuse for Ameritech Michigan to refuse to provision a loop.

The Commission agrees with the ALJ that Ameritech Michigan should be ordered to cease and desist from demanding that BRE waive its right to dispute the special construction charges as a condition of providing loops. The parties negotiated Section 29.19 of the interconnection agreement to provide for a dispute resolution process. It is improper for Ameritech Michigan to effectively amend Section 29.19 by imposing a waiver requirement as a condition for provisioning loops. Accordingly, Ameritech Michigan's exception should be rejected.

Attorney Fees

The ALJ recommended that the Commission order Ameritech Michigan to reimburse BRE for its reasonable attorney fees and costs. Ameritech Michigan excepts. In so doing, Ameritech Michigan references arguments that were previously considered and rejected by the Commission in a number of prior proceedings including the September 30, 1997 order in Case No. U-11229, the December 17, 1997 order in Case No. U-11412, the March 24, 1998 order in Case No. U-11507, the May 11, 1998 in Case No. U-11550, and the October 2, 1998 order in Case No. U-11654. In

this case, as in the cases cited above, the Commission finds that an award of costs and attorney fees is appropriate.

Fines

The ALJ recommended that the Commission fine Ameritech Michigan a total of \$170,000.¹⁶ In its exception, Ameritech Michigan maintains that the purpose of Section 601 is not to punish a wrongdoer, but to make an innocent party whole for actual harm sustained. Because the ALJ recommended that BRE not be awarded any amount for economic losses, Ameritech Michigan believes that imposition of a fine would be inappropriate. Additionally, Ameritech Michigan argues that there are other factors that mitigate against the imposition of a penalty. Citing the lack of a definition of “available” in the interconnection agreement, Ameritech Michigan maintains that the fine recommended in the PFD should be rejected.

The Commission disagrees with Ameritech Michigan regarding the purpose of Section 601 of the MTA. The Commission finds that the Legislature’s intent to create a civil penalty for violation of the MTA is clear and unmistakable from the language used in Section 601(a) and (b). Further, the Commission finds that the amount of the fine recommended by the ALJ is appropriate in light of the violations proven in this proceeding.

Damages

BRE excepts to the ALJ’s refusal to recommend an award of damages for the violations established by the evidence. According to BRE, Ameritech Michigan’s illegal activities caused BRE to

¹⁶The fine consists of \$2,000 fines for each of the 65 incidents, a \$20,000 fine for the violation of Section 305(1) of the MTA, and another \$20,000 fine for the violation of Section 355(1) of the MTA.

lose 15 customers and 85 access lines. BRE contends that its original estimate of the value of the 85 lines is accurate and supports an award of \$2.5 million. However, in the event that the Commission agrees with the ALJ that its supporting documentation lacks probative value, BRE insists that evidence of its actual sale price of \$70 million contained in Exhibit R-17, when divided by BRE's 22,000 access lines, justifies imposition of monetary damages in the amount of \$3,181.82 per access line for each of the 85 lines lost, or a total of \$270,454.70.

In response, Ameritech Michigan maintains that BRE clearly failed to carry its burden of proving damages as required by Section 203 of the MTA. The Commission agrees.

The Commission finds that the record does not support BRE's assertion that the loss of 15 customers necessarily reflects the loss of 85 access lines. Rather, the Commission finds that, at most, BRE has established that the loss of 15 customers resulted in the loss of 16 access lines. Moreover, the Commission is persuaded that BRE's support for imposition of damages on a per line basis of \$29,971 is simply not credible. Further, the Commission finds that even using the sale price to calculate a per line damage amount is too speculative because it relies on the assumption that 100% of the sales price resulted from the purchaser's desire to obtain BRE's access lines. The Commission finds that there is no evidence to support that assumption. Accordingly, the Commission is persuaded that BRE's exception should be rejected.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 et seq.; MSA 22.1469(101) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACs, R 460.17101 et seq.

b. Ameritech Michigan violated the interconnection agreement and the MTA by imposing special construction charges against BRE as alleged in the complaint.

c. Ameritech Michigan violated the interconnection agreement by requiring BRE to waive its rights under the interconnection agreement in order to purchase unbundled loops.

d. Ameritech Michigan should be ordered to cease and desist from imposing special construction charges against BRE under the circumstances presented by the complaint.

e. Ameritech Michigan should be ordered to cease and desist from requiring BRE to waive its rights under the interconnection agreement in order to purchase unbundled loops.

f. Ameritech Michigan should be ordered to refund, if paid, or cancel, if not paid, the special construction charges imposed on BRE.

g. Ameritech Michigan should pay the reasonable costs and attorney fees incurred by BRE in connection with this case.

h. Ameritech Michigan should pay a fine of \$170,000 to the State of Michigan in connection with this case.

i. BRE's request for money damages should be denied.

THEREFORE, IT IS ORDERED that:

A. Ameritech Michigan shall cease and desist from violating the interconnection agreement and the Michigan Telecommunication Act, 1991 PA 179, as amended, MCL 484.2101 et seq.; MSA 22.1469(101) et seq., by imposing special construction charges against BRE Communications, L.L.C., d/b/a Phone Michigan, of the nature complained of in the complaint.

B. Ameritech Michigan shall cease and desist from the practice of requiring BRE Communications, L.L.C., d/b/a Phone Michigan, to execute a waiver of its rights in violation of Section 29.19 of the interconnection agreement in order to purchase unbundled loops.

C. Ameritech Michigan shall refund, if paid, or cancel, if not paid, the amounts imposed on BRE Communications, L.L.C., d/b/a Phone Michigan, in violation of this order.

D. Ameritech Michigan shall pay the reasonable costs, including attorney fees, incurred by BRE Communications, L.L.C., d/b/a Phone Michigan, in connection with this case.

E. Ameritech Michigan shall pay the State of Michigan a fine in the amount of \$170,000 as provided by this order.

F. The request for money damages made by BRE Communications, L.L.C., d/b/a Phone Michigan, is denied.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand

Chairman

(S E A L)

/s/ David A. Svanda

Commissioner

By its action of February 9, 1999.

/s/ Dorothy Wideman

Its Executive Secretary

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

Commissioner

By its action of February 9, 1999.

Its Executive Secretary

In the matter of the complaint of)
BRE COMMUNICATIONS, L.L.C., d/b/a)
PHONE MICHIGAN, against **AMERITECH**)
MICHIGAN for violations of the Michigan)
Telecommunications Act.)
_____)

Case No. U-11735

Suggested Minute:

“Adopt and issue order dated February 9, 1999 finding that Ameritech Michigan violated its interconnection agreement with BRE Communications, L.L.C., d/b/a Phone Michigan, and the Michigan Telecommunications Act, ordering Ameritech Michigan to cease and desist from further violations, and directing Ameritech Michigan to pay fines, costs, and attorney fees, as set forth in the order.”